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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,179	09/15/2003	Jerald C. Seelig	619.489 ACC.CIP-Bingo Nig	1427
21707	7590	01/31/2006	EXAMINER	
IAN F. BURNS & ASSOCIATES P.O. BOX 71115 RENO, NV 89570			LAYNO, BENJAMIN	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/663,179	SEELIG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Benjamin H. Layno	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18, 20-38, 40-42 and 47-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18, 20-38, 40-42 and 47-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicant's arguments filed 11/14/05 have been fully considered but they are not persuasive. The rejections follow.

#### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-18, 20-38, 40-42 and 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glasson et al. in view of Rivero.

4. The patent to Glasson et al. discloses a gaming apparatus comprising gaming device 10 configured to allow a player to place a wager on a simulation of a bingo game. A display, Figs. 3-7, below caller 42, comprises a video image of a bingo ball container, having a plurality of moveable objects. Glasson recites "an animation of bingo balls being mixed in a barrel-like container", paragraph [0041]. Furthermore, Glasson gaming device discloses a controller 36, and a controller selectable object 48 in communication with the controller. The controller selectable object 48 is displayed to the player as a video image of a number corresponding to a bingo ball that was selected from the barrel-like container. Thus, the controller selectable object 48 is substantially similar in appearance to the bingo balls in the barrel-like container. Thus giving the illusion that the controller selectable object 48 is one of the bingo balls from the barrel-like container. Glasson also discloses a game display 58-62 in communication with the controller. The game display comprises a plurality of display positions representing bingo cards. The bingo cards clearly have a matrix of cells formed in rows and

columns. Each cell is correlated to a display position, wherein the controller is configured to select a bingo ball, the display symbol or number on the selected bingo ball is displayed on the game display until either a row, a column or a diagonal of the matrix is filled with display symbols or numbers, paragraphs [0041] – [0043]. In a primary game a player may select one bingo card 58-62 to play the game. A bonus game may be provided if a player chooses more than one bingo card, paragraph [0007].

The patent to Rivero disclose a gaming device comprising a gaming device housing 1, a mechanically rotatable cage-like display container 2, a plurality of moveable objects 17 inside the rotatable cage-like display container, and an actuator (motor) configured to rotate the cage-type display container. Also, rotatable cage-like display containers are well known in the bingo games.

In view of such teaching, it would have been obvious to modify Glasson's barrel-like container such that it is in the form of a mechanical or video image of rotatable cage-like display container. The mechanical rotatable cage-like display container would have been horizontally mounted inside Glasson's gaming device, and would have been rotated by a motor. Using a clutch, a flange connected to the rotatable cage-type display, and a belt in communication with the motor would have been an obvious and well-known means of driving the rotatable cage-like display container. The rotating motion of the cage-like display container agitates the moveable objects or bingo balls. This modification would have made Glasson's gaming apparatus look more like a bingo game, and thereby attracting bingo players. Determining the shape of the rotatable cage-like display container (e.g. sphere, cylinder, etc.) would have simply been an

aesthetic design choice, which is always obvious in the art. Furthermore, it would have been obvious to a person having ordinary skill in the art to provide an attraction mode wherein the rotatable cage-like display container continues to rotate when no active game is being conducted in Glasson's gaming device.

The Applicant has argued that element "48" of Glasson corresponds to a display of "the last number drawn". This does correspond to "controller selectable object (prize ball)" of Applicant's claims. Element "46" is a representation of a bingo board that indicates drawn bingo numbers (indicia). This is not the same as a display of the drawn bingo balls themselves. Thus, Glasson provides no "illusion that the selected balls are actually being withdrawn from the barrel and displayed as such".

5. The Examiner takes the position that, the claimed recitation "whereby the controller selectable object being displayed to the player provides an illusion that controller selectable object is the moveable object" is a recitation of the **intended use** of the claimed invention. Intended use of the claimed invention must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. There is **no** structure in the claims of the present invention distinguishing claimed invention from the prior art.

6. The Applicant has also argued against the Rivero reference individually by stating that "Rivero actually teaches away from the ball-container requirements of Glasson. Glasson requires the bingo balls to be drawn from the container so that the balls are not replaced, so that no bingo numbers can be drawn more than once. In

contrast, the container to Rivero is configured to release a ball from the container into and to return (same) back into the container during rotation of the container”.

7. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The Applicant has also argued that “the cited prior art does not involve any actual physical balls to display the outcome of a game”. The Examiner takes the position that there is **no** recitation in the claims of “physical balls”. The Applicant has also argued that “these games (cited prior art) tend to be less desirable because game players prefer to see physical objects rather than electronic simulations of physical objects”. This is simply a subjective statement unsupported by any claimed structural difference.

#### ***Allowable Subject Matter***

8. The following is a statement of reasons for the indication of allowable subject matter: If the independent claims of the present invention were amended to include structural limitations similar to Patent No. 6,338,678, such as “a plurality of display balls”, “at least one container, the container being adapted to hold the display balls, the container having at least one portion that is at least partially transparent, wherein the player may view the display balls inside the container”, “a plurality of prize balls”, “at least one prize ball holder, the ball holder being adapted to hold the prize balls in an

individually controlled manner, wherein prize balls in the ball holder are hidden from view of the player” and “a controller in communication with the game apparatus, the controller being adapted to select at least one prize ball in the holder”, the claims would be allowed. These proposed limitations would **structurally support** the claimed “whereby the controller selectable object being displayed to the player provides an illusion that controller selectable object is the moveable object”.

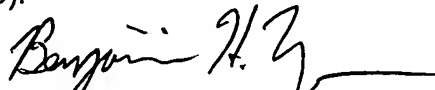
9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571)272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Benjamin H. Layno  
Primary Examiner  
Art Unit 3711

bhl